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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,336	12/28/2001	Gopinathan K. Menon	680.0049USU	8349
7590 02/13/2004			EXAMINER	
Charles N.J. Ruggiero, Esq. Ohlandt, Greeley, Ruggiero & Perle, L.L.P. 10th Floor One Landmark Square Stamford, CT 06901-2682			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1654	
DATE MAILED: 02/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/034,336

Applicant(s)

MENON ET AL.

Examiner

Susan Coe

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-46 is/are pending in the application.
- 4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 31-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The amendment filed November 10, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claim 16 has been cancelled.
3. Claims 31-46 have been added.
4. Claims 1-15 and 17-46 are pending.

### ***Election/Restrictions***

5. This application contains claims 17-30 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
6. Claims 1-15 and 31-46 are examined on the merits.

### ***Claim Objections***

7. Claim 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 32 contains the same weight limitations as in claim 31.

***Claim Rejections - 35 USC § 102***

8. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,660,840 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the "coconut milk" used in US '840 is not the same as "coconut water." However, in the art, coconut water is defined as the same substance as coconut milk. For example, US Pat. Appl. No. 2002/068326 A1 states that the milk is the same as the watery part of the coconut meat (see paragraph [0008]; thus, in the art, coconut milk is also considered coconut water. Therefore, US '840 is considered to teach using coconut water in a cosmetic composition.

***Claim Rejections - 35 USC § 103***

9. Claims 1-5, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '840 for the reasons set forth in the previous Office action.

Applicant argues against this rejection for the same reasons as in the traversal of the 102 rejection based on this reference. Therefore, the rejection is considered valid for the reasons stated above.

10. Claims 1-7, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,910,308 for the reasons set forth in the previous Office action.

All of applicant's argument regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that US '308 does not teach using *Gynostemma* in the amounts claimed. However, the reference does not specifically teach adding the ingredients in

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the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results.

In addition, applicant argues that the claimed range, 0.0001% to 5% produces unexpected results in regards to the effect of the plant on the production of ATP. Applicant specifically points out Example 3 and Figure 3 to support this claim of unexpected results. However, the data provided by the applicant does not support a claim of unexpected results. The data only shows a comparison of activity between 0.01% and 0.001% to a control, no other concentrations are shown. The data does show that 0.01% and 0.001% increase ATP production in comparison to the control. However, the data also show that 0.01% increases ATP production to a much larger degree than 0.001%. applicant has not provided data for any other concentrations, but it seems logical to assume that the effect the plant extract has on ATP production is dose dependent. Therefore, the concentrations used in US '308 would have an even larger effect than the amounts claimed by applicant. Thus, applicant has not demonstrated that the claimed amounts have unexpected results.

11. Claims 1-9, 11-15, and 31-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '308, JP '729, US '840, and JP '498 for the reasons set forth in the previous Office action.

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All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that none of the references teach using coconut water. However, as discussed above, US '840 is considered to teach using coconut water.

12. Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US '308, JP '729, US '840, and JP '498 as applied to claims 1-9, 11-15, and 31-46 above, and further in view of US Pat. No. 5,698,423 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that none of the references teach using coconut water. However, as discussed above, US '840 is considered to teach using coconut water.

13. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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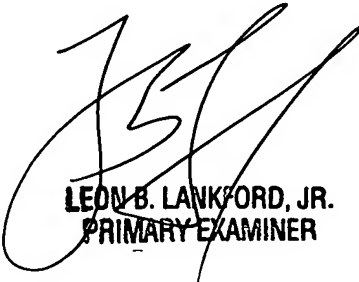
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
February 4, 2004



LEON B. LANKFORD, JR.  
PRIMARY EXAMINER